

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Crim. No. 03-CR-80391

Civil No. 07-CV-10553

Hon. John Feikens

v.

DONOVAN JAY SMITH,

Defendant.

ORDER DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY

Following my denial of his motion to vacate his sentence under 28 USC § 2255, Donovan Jay Smith seeks a certificate of appealability pursuant to 28 USC § 2253. A judge grants a certificate of appealability only “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 USC § 2253(c)(2).

Smith has made no such showing. Smith asserts ineffective assistance of counsel, claiming that his counsel failed to clarify whether the petitioner was pleading guilty to possession with intent to distribute cocaine base or possession with intent to distribute crack cocaine. Smith claims that based on this advice, he made an uninformed involuntary decision to plead guilty.

In order for petitioner to establish that he was denied effective assistance of counsel, petitioner must establish that (1) his attorney’s performance was deficient; and (2) that he was prejudiced by this inadequate assistance. Tyler v. United States, 78 F.Supp.2d 626, 631 (E.D.

Mich., 1999)(Gadola, J.); Meeks v. Bergen, 749 F.2d 322, 327 (6th Cir. 1984). As discussed in my previous opinion, counsel's performance here was not deficient and Smith suffered no prejudice.

For these reasons and those stated in my previous opinion, Smith has not made a substantial showing of the denial of a constitutional right as required under 28 USC § 2253.

Therefore, I DENY his request for a certificate of appealability.

IT IS SO ORDERED.

s/John Feikens

John Feikens

United States District Judge

Dated: September 15, 2008

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on September 15, 2008.

s/Carol Cohron

Deputy Clerk